Supreme Court, U.S.
FILED
JUL 31 1991
OFFICE OF THE CLERK

91-504

No.

In The
Supreme Court of the United States

October Term 1991

Corby Memorial Trust, an Alabama Trust
Petitioner

vs

State of New Jersey,
Respondent

Petition For
Writ of Certiorari
To The
Supreme Court of New Jersey

Petition For Writ Of Certiorari

Corby Memorial Trust
(an Alabama Trust)

James G. Somerville, Trustee
Pro Se

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Pro Se

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EDITOR'S NOTE:

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

QUESTIONS PRESENTED

Can the STATE OF NEW JERSEY legally assess and tax CORBY MEMORIAL TRUST, a State of Alabama irrevocable split-interest Charitable Remainder Unitrust, created April 24, 1980 more than three full years before the Donor's death on June 23, 1983? Subject charitable trust applied for and received a Federal Tax Identification Number (#59-6735073) and has filed Federal Tax information returns (I.R.S. Forms 5227 and 1041-A) for Years 1980 to date (11 years); and, the Trust is tax-exempt under I.R.C. Section 664 and has been tax-exempt since its inception. Can the STATE OF NEW JERSEY falsely pretend that the assets of CORBY MEMORIAL TRUST are instead the probate estate of the donor?

Can the STATE OF NEW JERSEY properly "seize" and subversively convert money assets from a bank account belonging exclusively to the CORBY MEMORIAL TRUST, and

wherein the bank was advised in person by the Donor in the presence of trustee James G. Somerville of the irrevocable transfer and received copies of the notarized assignment form dated April 24, 1980 with a copy of the Trust Instrument and was advised of the Federal Tax Identification Number of the trust and instructed to report all income earnings to the Federal Internal Revenue Service as required, and wherein bank personnel assured the Donor and trustee James G. Somerville that they would properly administer the bank account for the CORBY MEMORIAL TRUST in accordance with the Donor's instructions?

Can the STATE OF NEW JERSEY under false pretenses interpret an irrevccable trust instrument and irrevocable transfers made on April 24, 1980 and reported to the United States Internal Revenue Service as a transfer made on a fictitious date more than three years later?

Can the STATE OF NEW JERSEY tax JAMES G. SOMERVILLE and ARLENE CORBY SOMERVILLE as if they had received certain fictitious sums of money, which they in fact never received and will never receive in accordance with the terms and provisions of the charitable trust?

Can the STATE OF NEW JERSEY falsely pretend that optional trust benefits which are clearly contingent and defeasible are instead a "guaranteed annuity" similar to a life insurance annuity contract?

Can the STATE OF NEW JERSEY tax optional "rights" (not transactions), or is the purpose of government to protect rights, not to tax them?

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NO._____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1991

CORBY MEMORIAL TRUST, an Alabama Trust
PETITIONER

VS.

STATE OF NEW JERSEY,
RESPONDENT

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF NEW JERSEY

PETITIONER, CORBY MEMORIAL TRUST, an Alabama Trust under Declaration of Trust dated April 24, 1980, by its trustees JAMES G. SOMERVILLE and ARLENE CORBY SOMERVILLE, acting PRO SE, respectfully prays that a Writ of Certiorari issue to review the judgments and orders of the SUPREME COURT OF NEW JERSEY (Docket No. 31,345), SUPERIOR COURT OF NEW JERSEY, Law Division (Docket No. DJ-50256-89), SUPERIOR COURT OF NEW JERSEY, Appellate

Division (Docket No. A-2255-88T5) and the judgment, order and unsigned opinion (not for publication) of the TAX COURT OF NEW JERSEY (Docket No. 11-11-0315-87IT).

ORDERS/OPINIONS BELOW

Order of the SUPREME COURT OF NEW JERSEY denying reconsideration, dated April 30, 1991, FILED May 1, 1991, is appended hereto as APPENDIX A. APPENDIX A-2 is a copy of PETITION FOR REHEARING EN BANC submitted March 30, 1991. The SUPREME COURT OF NEW JERSEY ORDER dated March 5, 1991 and filed March 7, 1991 is attached hereto marked APPENDIX B. ORDER of the SUPERIOR COURT OF NEW JERSEY - Law Division dated January 8, 1990 which confiscated money from CORBY MEMORIAL TRUST "during due process" is marked APPENDIX C-1 APPENDIX C-2, our letter to the Court dated November 3, 1989 which documents MAJOR MISTAKES was totally disregarded and in actual fact the seizure of moneys was accomplished with no due process protection(s) at all.

APPENDIX C-3 documents the "Warrant of Satisfaction" or completed seizure dated 24 January 1990. The November 30, 1989 ORDER of the SUPERIOR COURT OF NEW JERSEY, Appellate Division, simply upholding the lower court judgment is appended hereto marked APPENDIX D (note that it is not for publication).

SUMMARY JUDGMENT dated November 18, 1988 is attached hereto and marked APPENDIX E. APPENDIX F is letter dated November 14, 1988 from the Hon. Lawrence L. Lasser, P.J.T.C. enclosing his fourteen-page "opinion" which appears to have been prepared by the Office of the Attorney General; the "opinion" is not signed; it is marked NOT FOR PUBLICATION WITHOUT THE APPROVAL OF THE TAX COURT COMMITTEE ON OPINIONS.

JURISDICTION

As to substance, this case has the elements of a Federal jurisdiction. There is diversity of citizenship, in that the State of New Jersey has wrongfully confiscated funds

belonging to an Alabama trust. The amount in controversy is in excess of $10,000. Numerous violations of Constitutional rights are involved. The wrongful "taking" of property is a matter of interference in interstate commerce.

In order to exhaust all remedies, the trustees have in effect been forced to respond over and over again to acts of the State designed to exhaust the citizens and catch them in defaults of one type or another all through the system from the Transfer/Inheritance Tax Bureau through the State Tax Court, Appeals Court, Law Division and finally the State Supreme Court.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Applicable provisions of The Constitution of the United States which have been violated are set forth in APPENDIX G and include ARTICLE I, Section 8; ARTICLE IV, Section 1; ARTICLE IV, Section 2; ARTICLE VI, Amendment IV, Amendment V, Amendment VI, Amendment VII,

Amendment VIII, and Amendment XIV.

NEW JERSEY LAW DIGEST, MARTINDALE HUBBELL Volume VII, 1983 page 56 (with pertinent excerpt enlarged) is appended hereto marked APPENDIX H.

STATEMENT OF THE CASE

CHRISTMAS 1979 was a sad holiday for our small family. It was the first Christmas tide since my mother's death. I had spent weeks before the holiday with my father at my folks' home in New Jersey preparing to sell the house and taking my mother's personal things to the Salvation Army hoping they might provide a bit of pleasure for others. 1979 had been a most difficult year. My husband accepted a military appointment with the Army Missile Command in Huntsville, Alabama which meant being away from our residence in Palm Beach County, Florida, my husband's family homestead since 1924. Jim flew to New Jersey to join Dad and me for the holidays. On Christmas morning he presented me a lovely gift, a heart-shaped pen-

dant on a fine gold chain. I chided him affectionately that it was too extravagant considering all the unusual expenses we had had during the past year but that I would always treasure it for its very special meaning. Dad, with a tear in his eye, commented that he wished he had been extravagant and given my mother such a lovely gift. He said he had been too saving (too frugal) and "what good was it", that when Mother had her stroke all the money in the world couldn't have helped her. I assured Dad that it was good, that he was good, and that he was right to have sacrificed much over the years and saved to be financially independent, to be prepared for emergency. Earlier we had been discussing our son (James Corby Somerville) who lived in California and the unlikelihood of his presenting us with grandchildren. Fingering the pendant heart, thinking of the symbolism of "eternal love" "undying love" I had an inspiration. On both sides of our family there was no succession. Why couldn't we set up a

"foundation" for philanthropic purposes which would carry on our family names in perpetuity? Dad said, "That's a nice idea all right, but we don't have that kind of money -- do we, Jim?" "No, of course we don't have that kind of money. It takes a lot of money, real fortunes, simply to justify all the professional fees incurred", Jim responded, "but, it just might be possible if we did all the work ourselves" ...

On January 3, 1980 we created SOMERVILLE TRUST on a do-it-yourself basis.

Dad liked the whole idea and suggested it would be simplest to transfer his accounts to the trust and have only one trust. But, I, (who had authored the trust which Jim edited for final copy) felt that Dad should not hurry into it. After all, it was irrevocable and both Jim and I wanted to be certain Dad understood well all facets of an irrevocable trust. I felt that Dad should take an active part in creating such a trust and we worked on a final version of CORBY MEMORIAL TRUST

over several months.

I spent some time researching at the local public library, but all law books were locked away in a separate room available only for local attorneys. I did locate a "spend-thrift clause" in an old out-dated financial planning book in the main library. This clause is a crucial part of the trust instrument. It makes the non-charitable beneficiaries' interests non-assignable and clearly contingent and defeasible.

I also called an IRS office and an expert on trusts and estates counselled me that in creating a trust one could add any (proper) thing in the document.

It was Easter when we completed the trust. CORBY MEMORIAL TRUST was signed before a notary on April 24, 1980. On that same date we made notarized assignments of bank accounts and we made an application to the Internal Revenue Service for a Tax Identification Number.

More than three years later, on June 23,

1983 my father died. His death was prematurely brought about by a medical test which went awry. Efforts to sell Dad's residence had been unsuccessful. During unusually heavy rains, the basement of his hilltop home flooded; he carried heavy items upstairs and irritated a previous hiatal hernia condition. He was given barium xrays which caused an intestinal blockage and proved fatal. The evening before his death his last conversation with me was about the trust and our plans for the foundation. He was concerned that we didn't have enough money to operate it. I assured him that by doing the work ourselves and using some good old-fashioned American ingenuity, we would indeed manage to do the things we had talked about.

It was shortly thereafter that we learned that there was a rule-of-thumb that a foundation should have an assured annual income of not less than $25,000. We still fall short of that minimum and believe that at present day inflated values an annual

minimum of $50,000 is probably more realistic.

Nevertheless, in the meantime during December 1987 we chartered CORBY-SOMERVILLE PHILANTHROPIES, a non-profit Alabama corporation which has been approved by the Internal Revenue Service as tax-exempt under I.R.C. Section 501(c)(3). During November 1990 we created CORBY-SOMERVILLE FOUNDATION, a permanent trust to assure and mandate perpetuity in the event the perpetual corporation should be dissolved for any reason. During our lifetimes, we call the corporation and the trust C-S PHILANTHROPIES and C-S FOUNDATION respectively. We have neither paid salaries nor professional fees of any kind.

After my father's death, I made a proper report to the State of New Jersey. His probate estate was less than $15,000. As trustees we found that several New Jersey banking institutions refused to honor our trustee status and requested tax waivers. Thus started a nightmare of redtape, mistakes, misunderstandings, misinterpretations and fund-

amental unfairness.

The State of New Jersey Transfer/Inheritance Tax Bureau did not accept the Federal tax-exempt status of the irrevocable inter vivos trust and treated the trust as if (false pretenses) it had been part of a Last Will and Testament, which was irregular and and a substantial error contrary to FACT, and the Bureau wrongfully misinterpreted the trust as a guaranteed annuity. This constituted a substantial major mistake, but because of the technical tax nature of the split-interest trust, we are personally understanding of the audit-clerk's making such a mistake and misinterpreting, misconstruing the trust. Unless experienced in this professional specialty, even very few professionals understand the complexities.

Under Section 664 of the Internal Revenue Code there is a very substantial difference between a unitrust and an annuity. An annuity trust is based on a one-time donation to corpus which is fixed. But, an unitrust

can receive an unlimited number of donations to corpus over a period of time and thus accomodates a beneficiary's option to forfeit distributions or donate them back to corpus.

The foregoing misinterpretation was the fundamental substantial mistake on which the controversy at hand has been based and compounded over the years 1984 to date. Once the original mistake was made, the STATE OF NEW JERSEY has refused over and over again to correct it and cancel the wrongful assessment, in effect forcing the trustees to continue litigation for many years to stand up for justice and protect the interests of the benevolent philanthropic trust.

NEW JERSEY's own law supports the trustees' position: Please refer to APPENDIX H, THE MARTINDALE HUBBELL NEW JERSEY LAW DIGEST 1983 excerpt which clearly states:

(1) transfer prior to three years conclusively presumed not in contemplation of death;

(2) contingent or defeasible interests (taxable) when (if) beneficiary comes into enjoyment.

During the years 1983 and 1984 we accepted two distributions from the trust in the amounts of $9,178.39 and $3,000.00 respectively which were taxable as income the year the transactions took place. These transactions were duly reported to the Federal Internal Revenue Service and the State of Alabama Dept. of Taxation where we reside. In retrospect we would have forfeited those distributions, but the years 1983 and 1984 involved unusual expenses to settle my father's affairs and dispose of his residence in New Jersey while tending to our own affairs in Alabama and Florida.

For all successive years we have forfeited distributions, allowing such amounts to be retained in the trust corpus until 1988 when annual distributions were started for C-S PHILANTHROPIES.

Total distributions of $12,178.39 certainly does not substantiate a tax of $35,026.15 plus interest which was seized by the State of New Jersey. This is inordinate,

excessive, punitive, unreasonable, unwarranted, unjust and inequitable and is a wrongful TAKING under and in violation of Amendment V to The Constitution of the United States, refer to APPENDIX G.

While we believe the original substantial mistake made by an audit-clerk in the Transfer/Inheritance Tax Bureau was probably due to misunderstanding because of lack of knowledge of a specialized nature, nevertheless the conduct of State of New Jersey employees has consisted of excesses and arrogance and disrespectful treatment which we do not deserve. For instance, after we had complained of deadline dates during major holidays (holiday abuse), on two occasions during midsummer we were sent packages with a large number of CHRISTMAS issue United States postage stamps affixed, a blatant irregularity, for the purpose of annoyance and a subtle implied message to harass.

There has also been irregularity in mail handling, both in postal receipt and in man-

ipulated postmarks, which can cause injustice in legal filing dates, etc., and which are worthy of notice for improving the justice system.

Many rich and famous persons set up foundations solely for tax reasons and their transfers to trusts have not set off an outrageous fiasco causing them years of inconvenience and sufferance. Should a family without succession who sets out to accomplish a worthy project of do-it-yourself philanthropy be punished so unjustly? **EQUAL JUSTICE UNDER LAW** seems to imply that we should enjoy the same treatment and tax exemptions as all other citizens.

As trustees, we have been denied the right to trial in violation of Amendments VI and VII to The Constitution of the United States (APPENDIX G). The right to professional counsel is denied us, (i.e. impartial).

We have been excessively fined and cruel and unusual punishments have been inflicted in violation of Amendment VIII of The Consti-

tution of the United States (APPENDIX G).

This entire case involves substantial misinterpretations of facts and law and results in gross injustice and inequity, due to failure to remedy or correct substantial mistakes.

In the nonprofit sector it seems to be generally known that trust documents and income tax reporting have a very wide range of "technical deficiencies" or variations, and allowances are routinely made to correct any technicalities provided **substance** is essentially proper.

While the State of New Jersey has to date refused to budge one iota to accomplish EQUITY, FAIRNESS, JUSTICE, we as trustees have taken steps to document for all pertinent purposes that since 1980 as trustees we have made every effort to comply totally with requirements of I.R.C. Section 664 and other federal regulations governing our philanthropic activities.

REASONS FOR GRANTING THE WRIT

Certiorari should be granted for the following reasons:

to correct errors in procedure

to correct substantial mistakes

to correct errors in the interpretation of law in the case

to achieve substantial Justice

to achieve EQUITY

to achieve FUNDAMENTAL FAIRNESS

to achieve EQUAL JUSTICE UNDER LAW

CONCLUSION

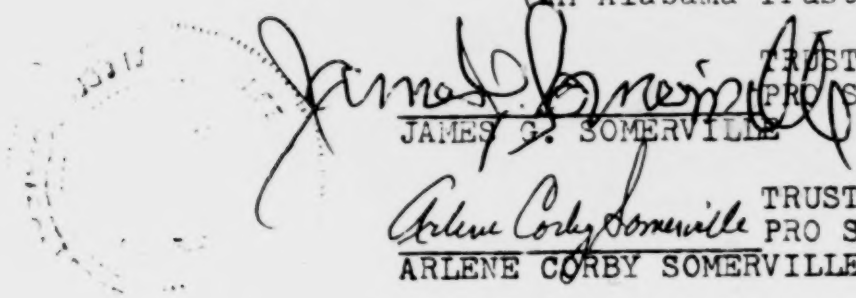
For the reasons set forth above, a Writ of Certiorari should issue to review the Order of the SUPREME COURT OF NEW JERSEY in this matter.

In the alternative, if this Court elects not to address the issues presented in this writ at the present time, it is requested that the matter be remanded to the lower SUPREME COURT OF NEW JERSEY for redetermination in the light of the substantial mistakes of fact and law, the irregularities and excesses of procedure and serious substantial inequity and injustice.

Dated at Huntsville, Alabama this 26th day of July 1991.

Respectfully submitted:

CORBY MEMORIAL TRUST
(an Alabama Trust)



TRUSTEE/
PRO SE
JAMES G. SOMERVILLE

TRUSTEE/
PRO SE
ARLENE CORBY SOMERVILLE

P.O. Box 4561
Huntsville, Alabama 35815

TEL: 205 / 882 - 1796

STATE OF ALABAMA)
: ss.
COUNTY OF MADISON)

Subscribed and Sworn to
before me this 26th day
of July 1991

Lee B. Stewart

Notary Public in and for
said County and State

MY COMMISSION EXPIRES 10/17/94

APPENDIX A-1

SUPREME COURT OF NEW JERSEY
M-909 September Term 1990

31,345

CORBY MEMORIAL TRUST,

Plaintiff-Movant,

vs. O R D E R

STATE OF NEW JERSEY,

Defendant-Respondent.

This matter having been duly presented to the Court, it is ORDERED that the motion for reconsideration is denied.

WITNESS, the Honorable Robert N. Wilentz, Chief Justice, at Trenton, on this 30th day of April, 1991.

/s/ Stephen W. Townsend
CLERK OF THE SUPREME COURT

(Stamped "FILED May 1, 1991 Stephen W. Townsend, Clerk" and

Stamped "I hereby certify that the foregoing is a true copy of the original on file in my office. Stephen W. Townsend, Clerk of the Supreme Court of New Jersey")

APPENDIX A-2

SUPREME COURT OF NEW JERSEY
Docket No. 31,345 - A-160
A-2255-88T



HUNTSVILLE, ALABAMA
35815-4561

CORBY MEMORIAL TRUST, Plaintiff/Appellant	
V.	PETITION FOR REHEARING EN BANC
STATE OF NEW JERSEY Defendant	

APPELLANTS, JAMES G. SOMERVILLE and ARLENE CORBY SOMERVILLE, acting pro se, respectfully herewith petition this Court for a rehearing or reconsideration of this Court's Order to Dismiss dated 5th day of March 1991 in the above-titled case and herewith show to this Court that Appellants, as a matter of law, are

entitled to an impartial and diligent complete indepth review/hearing or rehearing/ consideration or reconsidera-

tion, and

entitled to a written definite clear statement of the basis of facts dictating the rationale of reasoned decision with clear citations supporting and justifying the final decision on a legal/moral/equitable/Constitutional basis

and as grounds state that this Court appears to have overlooked, misapprehended or failed to consider, have yet to consider, or have postponed consideration for last resort request for rehearing which is hereby served; and state that the Clerk of this Court in his letter of March 6th, 1991 attached hereto referred to a Supreme Court Opinion but to this date has failed to supply Appellants a copy of said Opinion and has not responded to correspondence dated March 11 & 24, attached.

FURTHER, in the event this Court, rehearing en banc, reaches a decision in per total curiam in favor of State of New Jersey that it

also (1) expressly declare valid New Jersey Statutes and (2) expressly construe all applicable provisions of the Constitutions of the United States and of the State of New Jersey.

CERTIFICATE OF SERVICE: On March 30th, 1991 we the undersigned filed with the Clerk of the Supreme Court of New Jersey the original of this Petition by U.S. Certified mail #P-528 054 621 and served a copy thereof by U.S. first class mail to Attorney General, State of New Jersey.

WE CERTIFY THAT THE FOREGOING STATEMENTS MADE BY US ARE TRUE.

CORBY MEMORIAL TRUST

(an Alabama Trust)

/s/ James G. Somerville
JAMES G. SOMERVILLE

/s/ Arlene Corby Somerville
ARLENE CORBY SOMERVILLE

Co-Trustees

Signed at Huntsville, AL
the 30th day of March, 1991

P.O. Box 4561
Huntsville, AL 35815
TEL: 205/882-1796 (collect calls accepted)

APPENDIX B-1

SUPREME COURT OF NEW JERSEY
A-160 September Term 1990
#31,345

CORBY MEMORIAL TRUST,

Plaintiff-Appellant

v. O R D E R

STATE OF NEW JERSEY,

Defendant-Respondent.

The Court having carefully reviewed the filings of all parties as to the merits of the appeal, and good cause appearing; it is

ORDERED that the appeal is dismissed for failure to state a substantial constitutional issue within the meaning of the requirements of R. 2:2-1(a).

WITNESS, the Honorable Robert N. Wilentz, Chief Justice, at Trenton, this 5th day of March, 1991.

/s/ Stephen W. Townsend
CLERK OF THE SUPREME COURT

(Stamped "FILED March 7, 1991 (illegible)"
"I CERTIFY (illegible)"



HUNTSVILLE, ALABAMA
35815-4561

U.S. Certified Mail
Return Receipt Requested
No. P 289 404 511

June 12, 1990

Supreme Court of New Jersey
CN 970
Trenton, New Jersey 08625

RE: Docket No. 31,345
A-2255-88T5
CORBY MEMORIAL TRUST (an Alabama trust)
vs. State of New Jersey - plus
Superior Court of New Jersey
Docket No. DJ-50256-89

Your Honors:

As Trustees and acting "Pro Se", we delivered in person nine copies of appellate briefs to your Court on Monday, April 30th, 1990. On that date several Court administrative personnel verified that the Attorney General's Office had not submitted a timely response in this case. On Monday, May 21st, 1990 we received via U.S. certified mail a copy of a letter from the Attorney General's Office back-dated April 27th, 1990. These dates

are significant in that they continue an engineered pattern of mail abuse irregularities by the State of New Jersey which has plagued this case from the outset.

The Attorney General Office's letter simply continues the sham proceedings which repeat (and fail or refuse to correct) errors, mistakes, misinterpretations, misconceptions, false premises and wrongful assessments made by the T.I.T. Bureau.

This matter has been in painful progress since 1984. We are approaching the eighth decade of our lives and the barratrous arrogant tyrannous stranglehold on assets belonging to the benevolent trust we are dutybound to defend has been unreasonable, unjust, exhausting and is excessively cruel punishment to citizens who are simply philanthropic.

The Bureaucratic violations of our constitutional rights are blatant, outrageous and indeed even shockingly incredible. We have not disclosed to the "court of last resort" (public/media disclosure) but barris-

ters-bureaucrats-bankers who freeze and seize assets in arrogant violation of due process guarantees of The Constitution of the United States should be made aware that the general public would be appalled and more than a little disturbed at the realities of abuse of constitutional guarantees in cases such as this. Yes, indeed, these abuses are of "general public concern"!!!

The Deputy Attorney General misleadingly states that this case simply involves "an inter vivos trust". He fails to state that it is irrevocable and its purpose is philanthropy in perpetuity. He says "the decedent retained power and control", but he fails to state that the decedent/donor was one of two original trustees and that the administrative trustee and records of the trust and its federal tax-free status were from inception (1980) in the State of Alabama. Further, he does not acknowledge that the United States Federal Government has powerful impact over the control of the trust assets and that any trus-

tee's so-called "power" or "control" is specifically for the benefit of others. The D.A.G. misleads in bad faith.

The D.A.G. further says that the lower courts "held that the trust property was a transfer intended to take effect in possession or enjoyment at or after death". This is a false interpretation. In truth, the trust property irrevocably since April 24, 1980 was in possession and formally administered in accordance with federal law for the benefit of the philanthropic trust. But, the **DEAF EAR** prevailed, over and over again.

All the State's sham proceedings refuse to acknowledge true facts, circumstances and conditions. **EVEN IF** the trust had been created as part of a "last will and testament" (which would be intent to transfer at death) the terms of this specific trust are that **any benefits to non-charitable beneficiaries are 100% (repeat 100%) contingent and defeasible.** This is the simple truth which the T.I.T. Bureau and the Attorney General's

Office will not admit or recognize. Such optional benefits are also forfeitable and and have been so forfeited (for the good of philanthropy) by the undersigned as documented over and over again. On the basis of the foregoing simple truth, if the T.I.T. Bureau corrected its assessments accordingly, there would be no tax payable.

In most serious violations of "due process", Superior Court of New Jersey Docket No. DJ-50256-89, wherein Trustees' submissions were conveniently **"lost"**, arrogantly returned, and totally ignored, the State wrongfully seized an inordinate amount of funds including excessive interest penalties, from and with the wrongful cooperation of the Morris County Savings Bank, which seriously violated trust and interstate commerce and other banking laws. This seizing of funds **during** due process is a clear arrogant **denial of due process** and is a clear blatant **violation** of The Constitution of the United States.

This case is long drawn out and a clear case of gross abuse of a foreign philanthropic trust and constitutional guarantees regarding interstate commerce, among other abuses of constitutional rights described in earlier correspondence/briefs.

In correspondence with the T.I.T. Bureau, various state executives, the three lower courts, volumes of correspondence have been submitted over many years by these trustees, and there have never been substantial responses to the **substance** of this case. Repeated appeals to deal reasonably have only met with **DEAF EAR** and **DEAF EAR.**

The record of this case will show that in addition to having our Constitutional rights violated in many ways, we also were not accorded those rights which New Jersey provides under the CRIME VICTIMS BILL OF RIGHTS (effective July 31, 1985). We trustees have not been treated with dignity and compassion; we have not been informed about the justice process; have not been free from

intimidation; inconveniences associated with participation in the justice process have been enormous and have not been minimized; we have not been notified, nor informed about available remedies, etc.; nor compensated for losses ... nor advised of case progress; nor has property been promptly released, but instead an inordinate amount of assets were wrongfully frozen, wrongfully seized; and, we, as trustees of a philanthropic trust, have indeed been treated in a shabby manner up to this date.

IF TRUTH, JUSTICE AND EQUITY are to prevail, this Court must find for the CORBY MEMORIAL TRUST and its trustees. Clearly documented throughout, justified by law and moral ethics, the Trustees have acted in good faith. They have been seriously damaged, maltreated and their rights have been over and over again arrogantly violated in a gross miscarriage of Justice. Trust assets wrongfully seized should be refunded and the Morris County Savings Bank and the State of

New Jersey should be found guilty of wrongful freezing and seizing an inordinate amount of assets and prolonged failure to correct mistakes, which would have removed this matter from litigation at the outset. Punitive damages should be awarded to CORBY MEMORIAL TRUST.

If the judges and personnel of this Court have any questions, need any further information or assistance from the Trustees, please be assured that we stand desirous to cooperate to the fullest in an amicable manner to the end that truth, justice and equity prevail.

We are available for telephone conference and will accept collect telephone calls.

We pray for Justice and such remedies as the Court deems just, fair, reasonable and equitable.

Respectfully submitted:

CORBY MEMORIAL TRUST

(an Alabama Trust)

/s/ James G. Somerville
James G. Somerville

/s/ Arlene Corby Somerville
Arlene Corby Somerville

Co-Trustees

PRO SE

P.O. Box 4561
Huntsville, AL 35815

TELEPHONE: 205 / 882-1796

(collect calls will be

accepted)

cc: HON. ROBERT J. DEL TUFO
Attorney General of New Jersey
Attn: H. K. Glickman, D.A.G.

APPENDIX C-1

PETER N. PERRETTI, JR.
Attorney General of New Jersey
Attorney for Plaintiff, Division
of Taxation, Transfer
Inheritance Tax Bureau
R.J. Hughes Justice Complex
CN 112
Trenton, New Jersey 08625

By: HERBERT K. GLICKMAN
Deputy Attorney General
(609) 292-1526

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - MERCER COUNTY
DOCKET NO. DJ - 50256-89

STATE OF NEW JERSEY, DEPARTMENT OF THE TREASURY, DIVISION OF TAXATION, TRANSFER INHERITANCE TAX BUREAU,

Plaintiff,

v.

ARLENE CORBY SOMERVILLE, Individually, as Executrix of the Estate of HARRY R. CORBY, a/k/a HARRY CORBY, Deceased, and JAMES G. SOMERVILLE, as Beneficiary of the Estate of HARRY R. CORBY, a/k/a HARRY CORBY, Deceased

Defendant

Civil Action

ORDER

This matter being opened to the Court by Peter N. Perretti, Jr., Attorney General of New Jersey, by Herbert K. Glick-

man, Deputy Attorney General, attorney for plaintiff, and the Court having considered the papers submitted pursuant to R. 1:6-2;

AND IT APPEARING to the Court that the New Jersey Division of Taxation, Liens, Levies and Seizures Section by virtue of a writ of execution issued in the above entitled cause has levied upon all monies, debts, rights and credits due to the defendant from the Morris Savings Bank in the sum of $43,921.99 plus interest;

AND IT FURTHER APPEARING that there is still due and owing the plaintiff on account of the judgment entered in this cause in the sum of $35,036.15 plus interest;

IT IS on this 8th of JAN, 1990

ORDERED that the Morris Savings Bank pay to the New Jersey Division of Taxation, Liens, Levies and Seizures Section the sum of $31,917.27 from account #K224815, and the sum necessary from account #K224867 to satisfy the judgment entered in this cause.

/s/ Daniel A. O'Donnell
DANIEL A. O'DONNELL
J.S.C.

_____Opposed

_____Unopposed

(Stamped "The reasons for this order have been set forth on the record, by the court 1/5/90 ")

(Stamped "THE ORIGINAL OF THIS DOCUMENT HAS BEEN SENT TO THE MERCER COUNTY CLERK'S OFFICE FOR FILING.
DATED: 1/8/90 ")

APPENDIX C-2



HUNTSVILLE, ALABAMA
35815-4561

VIA U.S. CERTIFIED MAIL
NO. P 411 960 673
RETURN RECEIPT REQUESTED

November 3, 1989

Clerk of the Court
Superior Court of New Jersey
LAW DIVISION
Trenton, New Jersey 08625

RE: Docket No. DJ-50256-89
CORBY MEMORIAL TRUST (an Alabama Trust)
Tax-exempt under I.R.C. Section 664
created April 24, 1980 to operate in
perpetuity for philanthropic purposes

This is in response to undated NOTICE TO DEBTOR PURSUANT TO R. 6:7-1(b) with a covering letter dated October 27, 1989 from the Office of the Attorney General received by the undersigned on October 31st, 1989, being carefully timed to arrive to addressee on Hallowe'en, a documented arbitrary and capricious disrespectful act of continued egotistical harassment.

The Court's attention is respectfully invited to note the following irregularities, mistakes or deliberate deviously diversified venues as follows:

(1) the fraudulent sham Certificate of Debt heading reads "Mercer County";

(2) the fraudulent sham Notice to Debtor heading reads "Morris County";

(3) the fraudulent sham Notice to Debtor was executed in "Somerset County" at Bridgewater Township upon a date unknown and unshown.

By a strange coincidence, the county seat of Somerset County is in the City of SOMERVILLE. The defendant's family name is also SOMERVILLE. Is there a rationale or reasonable purpose for the selection of three separate counties? Or, in view of past demonstrated hostility, in response to challenge, shown by Attorney General's Office personnel, is the foregoing meant to be interpreted as a wierd insidious undercurrent of antagonism and something more highly sensitive, perhaps

even sinister and sadistic?

THE UTTERLY SHAM WRONGFUL NOTICE TO DEBTOR and wrongful continued proceeding is extremely unwarranted, improper, excessive, arbitrary, capricious, overzealous and punitive. It constitutes knowledgeable abuse of process, and continues abuse in another of a series of wrongful sham documents against the undersigned defendants, being based on deliberate misunderstandings and deliberate misapplications and mistakes of fact and malpractice of law, distortions and misleading statements of truth, and deliberate willful knowing blatant lies, fraud and perjury.

The wrongful sham NOTICE TO DEBTOR contains the following glaring major mistakes:

MAJOR MISTAKE NO. 1

a. The headings/captions are blatantly wrong. The gross estate of Harry R. Corby, who died testate, consisted of assets totalling less than $15,000 which was below amount subject to taxation. Arlene Corby Somerville was

the sole beneficiary and also executrix.

b. James G. Somerville is not and never has been a beneficiary of the "estate of Harry R. Corby";

c. The heading should properly read "CORBY MEMORIAL TRUST, James G. Somerville and Arlene Corby Somerville, Co-Trustees" or a proper legal variation thereof.

MAJOR MISTAKE NO. 2

The subject trust accounts held in the Morris Savings Bank no longer belonged to Harry R. Corby at his demise, but were assets of the CORBY MEMORIAL TRUST. The accounts were **irrevocably** assigned to CORBY MEMORIAL TRUST (the "transferee") by the principal Donor on 24 April 1980, more than three years before his death. The institution was provided true copies of the notarized assignment, trust instrument, documentation of the trust's taxpayer identification

number, and was instructed to be accountable to the Federal Government for tax purposes under the different tax entity.

James G. Somerville and Arlene Corby Somerville are designated Co-Trustees. They are also named as contingent beneficiaries of the trust, with all benefits being optional, contingent and defeasible. With the exception of distribution made in 1983/84 of an amount less than $15,000, the Somervilles have forfeited or donated back any sums to which they may have been entitled under the charitable remainder unitrust. Of special interest: CORBY MEMORIAL TRUST was created to be co-mingled with a charitable trust earlier established by the Somervilles to operate in perpetuity for philanthropic purposes.

As proof of taxpayer identity, all income and year-end balances of the subject bank accounts have been reported

annually by CORBY MEMORIAL TRUST starting with inception, the year 1980 to date.

MAJOR MISTAKE NO. 3

The wrongful levy made by the T.I.T. Bureau is based on a wrongful tax assessment based on misunderstanding and misapplication, misinterpretation of law and mistakes of fact. The wrongful tax assessment was erroneously computed on imaginary transactions which will never take place. The assessment is clearly and blatantly wrong. Further, the amount is also wrongfully and maliciously inflated by adding punitive interest, applied at highest percentage rate in a most arrogant punitive manner allowable under the T.I.T. Bureau's own procedures.

MAJOR MISTAKE NO. 4

The wrongful sham Notice to Debtor never should have been released to defendants at all. The wrongful Certificate of

Debt was challenged in a legally and properly filed **MOTION TO STRIKE AS SHAM** due to its blatant deliberate mistakes, fraud and perjury. The Motion was not timely responded to by the A.G.O. and failure to timely respond provides **automatic Order to Strike.** Thus, the Certificate of Debt is invalid, null and void.

In its entirety the fraudulent sham Certificate of Debt, as well as this subsequent Notice to Debtor, is wrongful, arbitrary, capricious, and antagonistic. The proceedings are unnecessary, unwarranted, unreasonable, excessive, harassing and outrageously out of order.

RE PROPERTY EXEMPT FROM EXECUTION BY FEDERAL AND STATE LAW:

KNOW THAT the assets standing in the Morris Savings Bank represent irrevocable property of the CORBY MEMORIAL TRUST, are fully tax-exempt under Federal I.R.C. Section 664,

and have been thus tax-exempt since the inception of the trust, from the year 1980 to date.

The said assets are also exempt from taxation by the State of Alabama. Further, if New Jersey laws are properly applied, there is every reason to believe that New Jersey's own laws provide for tax exemption in the true circumstances of the case.

In summary, assets belonging to CORBY MEMORIAL TRUST are 100% tax-exempt.

ALL PARTIES TO THIS CASE, TAKE NOTE:

Confiscation by the State of New Jersey through wrongful acts of its personnel conspiring to obstruct justice, freeze-and-seize in violation and denial of due process, devoid of the guarantees of The Constitution of the United States, knowledgeable interference with interstate commerce, violations of the sanctity of trust and laws of trust, willful punitive actions against good faith philanthropy,

breach of duty(ies) with resulting damages to trust and trustees, inter alia, constitutes legal larceny under "color of law".

The trustees have been forced into the Courts in order to claim and manage assets wrongfully "frozen" (which constitutes a wrongful **taking** without due process) since 1983. It is clearly documented that the trustees during such enforced proceedings have been abused, harassed, offended by an assortment of dirty tricks, unfair tactics, sham documents and proceedings and excessive actions attempting and hoping to exhaust the lay litigants. Consider that certain provisions of R.I.C.O. law may well apply.

The trust, its objectives and its long-term charitable beneficiaries have been exceedingly damaged; and, the trustees have been hurt, harmed, harassed and inconvenienced beyond belief.

As a matter of notice, all parties to this

outrageous course of conduct seeking to obstruct justice may be personally held liable for malpractice, misfeasance, malfeasance, tortfeasance and joint tortfeasance, and violations of law and professional and government-employee codes of ethics.

Accordingly, the Court is hereby respectfully requested to strike the Notice to Debtor as yet another sham document in the case.

The Clerk of the Court is requested to take such action(s) as may be necessary to implement this claim of total tax-exemption in the matter.

Very truly yours,

CORBY MEMORIAL TRUST
(an Alabama Trust)

/s/James G. Somerville
James G. Somerville

/s/Arlene Corby Somerville
Arlene Corby Somerville
Co-Trustees

P.O. Box 4561
Huntsville, AL 35815
Tel: 205/882-1796
(collect calls will be accepted)

COPIES TO:

Alphonse Scerbo/Clk Morris Co

Peter Perretti, Attn Gen NJ

Herbert Glickman, D.A.G.

Emil Petrecca, T.I.T. Bureau

Joseph Dreyer, T.I.T. Bureau

Marie Fahner, T.I.T. Bureau

Al Katowitz, Auditor/DoT

Hon. Thomas Kean, Governor

Feather O'Connor, State Treas

John Baldwin, Dir DoT

Patricia Janiszewski, Case Mgr

* * *

APPENDIX C-3

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - MERCER COUNTY
DOCKET NO. DJ-50256-89

ROBERT J. DEL TUFO, ATT. GEN.
RICHARD J. HUGHES JUSTICE COMPLEX
TRENTON, NEW JERSEY 08625
RETURN TO: INH. TAX BUR.
50 BARRACK STREET
TRENTON, NEW JERSEY
TEL. NO. 609-292-7179

)))

STATE OF NEW JERSEY
(DIVISION OF TAXATION,
TRANSFER INHERITANCE
TAX BUREAU),

Plaintiff

vs.

ARLENE CORBY SOMERVILLE, Individually, as Executrix and Beneficiary of the Estate of HARRY R. CORBY, a/k/a HARRY CORBY, Deceased, and JAMES G. SOMERVILLE as Beneficiary of the Estate of HARRY R. CORBY, a/k/a HARRY CORBY, Deceased,

Defendants

WARRANT OF SATISFACTION

TO THE CLERK OF THE SUPERIOR COURT
OF THE STATE OF NEW JERSEY:

WHEREAS, the State of New Jersey (Division of Taxation, Transfer Inheritance Tax Bureau) on the 8th day of June 1989, obtained a cer-

tificate of debt in the Superior Court of the State of New Jersey, against Arlene Corby Somerville, Individually, as Executrix and Beneficiary of the Estate of Harry R. Corby, a/k/a Harry Corby, deceased, and James G. Somerville as Beneficiary of the Estate of Harry R. Corby, a/k/a Harry Corby, deceased for $34,585.10 with interest at 10% per annum from February 23, 1984 to the date of entry of the certificate of debt on $11,210.19 and interest thereafter at 10% on the total amount due as by the record thereof may appear in Docketed Judgment No. DJ-50256-89;

AND WHEREAS, The State of New Jersey, Division of Taxation, Transfer Inheritance Tax Bureau received satisfaction for the same, these are, therefore to desire and authorize you to enter an acknowledgement of satisfaction upon the record of said certificate of debt, and for so doing this shall be your sufficient warrant and discharge ir that behalf.

IN WITNESS THEREOF, I John R. Baldwin, Director, Division of Taxation, Department of the

Treasury, State of New Jersey, have hereunto set my hand and affixed my seal, the 24th day of January, 1990.

/s/ John R. Baldwin
John R. Baldwin, Director
Division of Taxation
Department of the Treasury
State of New Jersey

Signed, Sealed and Delivered
in the presence of

/s/ Elaine G. Wojcik

(SEAL)

STATE OF NEW JERSEY)
) ss.
COUNTY OF MERCER)

BE IT REMEMBERED, that on this 24th day of January, 1990 before me, a notary public of the State of New Jersey, personally appeared John R. Baldwin, Director, Division of Taxation, Department of the Treasury, State of New Jersey, who, I am satisfied, is the person named in, and who executed the foregoing instrument, and did acknowledge that he signed, sealed and delivered the same as and for his voluntary act and deed of the State of New Jersey.

/s/ Elaine G. Wojcik

ELAINE G. WOJCIK
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires
Feb. 22, 1994

(Stamped "SUPERIOR COURT OF N.J.

FILED
JAN 25 1990
J-15
JOHN M. MAYSON
CLERK")

(Stamped "RECEIVED
JAN 30 1990

Transfer Inheritance Tax Bureau
N.J. Division of Taxation")

* * *

NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE COMMITTEE ON OPINIONS

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-2255-88T5

CORBY MEMORIAL TRUST,

Plaintiff-Appellant,

v.

STATE OF NEW JERSEY,

Defendant-Respondent.

Submitted November 22, 1989 -- Decided
NOV 30 1989

Before Judges Gaulkin and D'Annunzio

On appeal from the Tax Court

James G. Somerville and Arlene Corby Somerville, trustees of appellant Corby Memorial Trust, pro se.

Peter N. Perretti, Jr., Attorney General, attorney for respondent (Mary C. Jacobson, Deputy Attorney General, of counsel; Herbert K. Glickman, Deputy Attorney General, on the brief).

PER CURIAM

The November 18, 1988 judgment of the Tax Court is affirmed substantially for the reasons expressed in the November 14, 1988

letter opinion of Presiding Judge Lasser.

(Stamped "I hereby certify that the
foregoing is a true copy
of the original on file
in my office.

/s/ R Emille Cox
Clerk")

(Stamped "ORIGINAL FILED

NOV 30 1989

.....
Emille R. Cox, Esq.
Clerk")

* * *

NOTE: The foregoing document
contained no signature(s).

PLEASE REFER TO APPENDIX F

APPENDIX E

TAX COURT OF NEW JERSEY

OFFICE OF THE CLERK
609-292-5082

CN 972
TRENTON, NJ
08625

November 18, 1988

Mr. and Mrs. James G. Somerville
PO Box 4561
Huntsville, Alabama 35815

Herbert K. Glickman
Deputy Attorney General
Div. of Law-Financial
CN 112
Trenton, NJ 08625

RE: Corby Memorial Trust vs
State of New Jersey
Docket No. 11-11-0315-87IT

Enclosed is a certified copy of this Court's judgment in the above captioned matter.

Very truly yours,

Wesley R. LaBar
Clerk of the Tax Court

By: /s/Louisette F. Johnson
Louisette F. Johnson

TAX COURT OF NEW JERSEY
DOCKET NO. 11-11-0315-87IT

CORBY MEMORIAL TRUST,

Plaintiff,

v. Civil Action

STATE OF NEW JERSEY, JUDGMENT OF DISMISSAL
(Summary Judgment)

Defendant.

.. ..

A complaint having been filed in the above matter and the defendant having moved for summary judgment and the plaintiff having filed a cross-motion, and the Court having considered the evidence and the argument presented by or on behalf of the parties, and having granted the motion of the defendant, and having denied the cross-motion of plaintiff, the complaint is dismissed.

/a/ Wesley R. LaBar
Wesley R. LaBar, Clerk
Tax Court of New Jersey

Entered: November 18, 1988

Attorney for Plaintiff: Pro se
Attorney for Defendant: Herbert K. Glickman, Esquire

(Stamped "A TRUE COPY
/s/Wesley R. LaBar
Wesley R. LaBar, Clerk
Tax Court of New Jersey")

TAX COURT OF NEW JERSEY

APPENDIX F

LAWRENCE L. LASSER
PRESIDING JUDGE

CN 975
TRENTON, N.J. 08625
(609) 292-5160

November 14, 1988

Mr. and Mrs. James G. Somerville
Post Office Box 4561
Huntsville, Alabama 35815

Herbert K. Glickman
Deputy Attorney General
Dept. of Law & Public Safety
Div. of Law, Financial Section
8th Floor, West Wing, Justice Complex CN 112
Trenton, New Jersey 08625

Re: Corby Memorial Trust
v. State of New Jersey
Docket No. 11-11-0315-87IT

Dear Mr. & Mrs. Somerville and Mr. Glickman:

Enclosed is my opinion in the above matter.

Very truly yours,

/s/ Lawrence L. Lasser

Lawrence L. Lasser, P.J.T.C.

LLL:blg
Encl.
CERTIFIED MAIL
RETURN RECEIPT REQUESTED

APPENDIX F

NOT FOR PUBLICATION WITHOUT THE APPROVAL OF THE TAX COURT COMMITTEE ON OPINIONS *

TAX COURT OF NEW JERSEY
DOCKET NO. 11-11-0315-87IT

CORBY MEMORIAL TRUST,
Plaintiff

v.

MEMORANDUM OPINION

STATE OF NEW JERSEY,
Defendant.

Decided November 14, 1988

James G. Somerville and Arlene Corby Somerville, pro se, for plaintiff.

Herbert K. Glickman for defendant (W. Cary Edwards, Attorney General of New Jersey, attorney).

LASSER, P.J.T.C.

* * *

NOTE: As lay persons, Trustees, acting pro se, have a concern that to "publish" this restricted from publication "Memorandum Opinion" could place the Trustees in a position of "contempt of Court" when in fact Trustees have the utmost respect for the American Judicial System governed by the **checks and balances** of The Constitution of the United States.

Text of Opinion (fourteen pages, letter-size 8½ x 11 inches, unsigned) is therefore omitted due to restriction on publication by the preparer of the Opinion, the State of New Jersey, adversary in this case.

Note also that the fourteen-page Memorandum Opinion appears to have been written or authored by the Attorney General's Office. It is clearly capricious and frivolous and without merit as one of a series of sham documents wrongfully based on the absolutely documented prejudiced **false premise** that transfer to the trust took place on June 23, 1983, the date of Donor's death. In actual fact, the **irrevocable** transfer is well documented and took place, absolutely and forever, on April 24, 1980, more than three years before the Donor's death. Application for Federal Tax Identification Number was made and each financial institution was notified of the **irrevocable** transfer to CORBY MEMORIAL TRUST and provided with notarized documentation in the form of copies of the trust inst-

rument and notarized assignment document with written instructions.

While the subject Memorandum Opinion disregards **SUBSTANCE** and **EQUITY** and deals in "false pretenses" using conflicting technicalities, paradoxically the State of New Jersey's own "laws" clearly provide that "transfer prior to three years (is) conclusively presumed not in contemplation of death". (Refer to APPENDIX H). Further, New Jersey Statutes, Article 3, CHARITABLE TRUSTS, provides clearly the spirit of law that:

> "This article shall be so construed as to enable split-interest trusts and private foundation trusts to qualify for the maximum tax exemptions available to those trusts under the Internal Revenue Code of 1954 as amended." (N.J.S.A. 3B:11-13)

* * *

APPENDIX G

THE CONSTITUTION OF THE UNITED STATES

ARTICLE I - Section 8

The Congress shall have Power ... to regulate Commerce ... among the several States ...

ARTICLE IV - Section 1

Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State;

ARTICLE IV - Section 2

The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several states.

ARTICLE VI

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the judges in every State shall be bound thereby, any Thing in the

Constitution or Laws of any State to the Contrary notwithstanding.

Amendment IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated,

Amendment V

No person shall ... be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

Amendment VI

... the right to a speedy and public trial by an impartial jury ... and to have the assistance of counsel ...

Amendment VII

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved.

Amendment VIII

... nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Amendment XIV

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

NEW JERSEY LAW DIGEST

Inheritance Tax.—Transfer or inheritance taxes are governed by Tit. 54, cc. 33-36 and 38A, as amended and supplemented.

Tax is imposed on transfer of all real and tangible personal property situated in New Jersey and all intangible personal property wherever situated (including interest in jointly owned property) of resident decedents, and on real and tangible personal property located in New Jersey of nonresident decedents, of value of $500 or over, transfer of which is made by will or intestate laws, or in contemplation of death (transfer of material part of estate without adequate valuable consideration within three years preceding death presumed to be in contemplation of death; transfer prior to three years conclusively presumed not in contemplation of death) or to take effect at or after death, and transfers of estates in expectancy or pursuant to powers of appointment created after July 4, 1909. (Tit. 54, c. 34, §1).

Valuation date is date of death. No optional valuation date provided. (Tit. 54, c. 34, §5).

Appraisal of property is generally at "clear market value." (Tit. 54, c. 34, §5). Vested interests in remainder are taxable immediately; contingent or defeasible interests when beneficiary comes into enjoyment. Property subject to power of appointment is taxable when power is exercised but valued as of date of creation. (Tit. 54, c. 36, §§1-5). Provision is made for compromise and immediate payment of tax on future estates in lieu of posting bond. (Tit. 54, c. 36, §6).

Compromise.—State Treasurer or Director of Division of Taxation may agree with representative of estate to alter, revise, compromise and settle claim or lien for past due inheritance taxes, and interest and penalties thereon, as to which he has determined that there is reasonable doubt concerning enforcement of lien or collectibility of tax provided representatives, heirs and beneficiaries waive defenses. (Tit. 54, c. 38A, §3, Tit. 52, c. 18A, §34).

Deductions.—Debts of decedent, unless owing for or secured by property outside of state not taxable in this state (except excess of debt over value of security), expenses of funeral and last illness, administration expenses, commissions and attorneys fees, foreign transfer taxes on taxable property and local taxes accrued to date of death are deductible; but not Federal Estate Tax. (Tit. 54, c. 34, §5).

18 N.J.Super. 101, 86 A.2d 601 (Ch. 1952).

Substituted trustee could appoint committee under will provision that trustees were to select a committee for purposes of dividing principal, where will failed to disclose intention to restrict such power to original trustee. Id.

Will which created trust with two named trustees but with certain discretionary powers of financial management delegated to one of such trustees only, in absence of express prohibition precluding exercise of such powers by substituted trustee, did not deprive substituted trustee from exercising powers delegated to both of two original trustees. Boardwalk Nat. Bank of Atlantic City v. Morlock, 14 N.J.Super. 443, 82 A.2d 215 (Ch.1951).

3. Powers and duties—In general

Where estate's principal asset was controlling interest of corporations' outstanding stock which was subject of testamentary trust, and, executors were removed for dereliction of duty, ... ment and operations of the ... tions exclusively in the substi... trustee ... ration ... board of ... ed trust ... vote the stock for election of ... directors. In re Korzisky's Estate, ... N.J. 506, 86 A.2d 238 (1952).

Trustee substituted for ... named in will, by implication, ... power of sale of trust realty. ... v. Wears, 87 N.J.Eq. 459, 100 A. ... (1917).

The trustee could sue for ... received by a third person before ... appointment. Budd v. Hiber, 27 ... L. 43 (1858).

4. —— Administrator of trustee—powers and duties

Upon the death of a testator's trustee, who dies intestate, his ... was transmitted, so far as relates personality, to his administrator ... such administrator could settle trust accounts in the Orphans' ... Gulick v. Bruere, 42 N.J.Eq. 622, ... 710 (1887).

APPENDIX I

ARTICLE 3. CHARITABLE TRUSTS

3B:11-8. Short title

This article shall be known and may be cited as the "Charitable Trust Law of 1971."

L.1981, c. 405, § 3B:11-8, eff. May 1, 1982.

Historical Note

Source: C. 3A:43-1 (L.1971, c. 338, § 1).

Library References

Charities ⇐1 et seq. C.J.S. Charities § 1 et seq.

3B:11-9. Definitions

As used in this article:

a. "Code" means the Internal Revenue Code of 1954 as amended; [1]

is a private foundation described in section 509(a) of the code,[2] including each nonexempt charitable trust described in section 4947(a)(1) of the code [3] which is treated as a private foundation;

c. "Split-interest trust" means a nonexempt split-interest trust described in section 4947(a)(2) of the code, but only to the extent that section 508(e) of the code [4] is applicable to the nonexempt split-interest trust under section 4947(a)(2) of the code;

d. "Trust instrument" means a will, deed, agreement, court order, or other instrument pursuant to which money or other property is entrusted to a fiduciary, and also means the certificate of incorporation of a nonprofit corporation administering a charitable foundation trust;

e. "Trustee" means every fiduciary administering a trust instrument, and includes a corporation which is a private charitable foundation administering a private foundation trust;

f. "Trust" means private foundation trusts and split-interest trusts.

L.1981, c. 405, § 3B:11-9, eff. May 1, 1982.

[1] 26 U.S.C.A. § 1 et seq.
[2] 26 U.S.C.A. § 509.
[3] 26 U.S.C.A. § 4947.
[4] 26 U.S.C.A. § 508.

Historical Note

Source: C. 3A:43-2 (L.1971, c. 338, § 2).

3B:11-10. Provision included in trust instruments governing nonprofit corporations administering private foundation trusts

Notwithstanding any provision to the contrary contained in any law of this State or in any trust instrument, and except as otherwise provided in N.J.S. 3B:11-12, each trust instrument governing a nonprofit corporation administering a private foundation trust shall, by virtue of this article, and without any further act by any person or persons, be deemed to include the following:

"This corporation shall make distributions at times and in a manner as not to subject it to tax under section 4942 of the Internal Revenue Code of 1954 as amended, and shall not engage in any act of self-dealing as defined in section 4941 of the code,

and shall not retain any excess business holdings as defined in section 4943 of the code, and shall not make any investments as defined in section 4944 of the code, and shall not make any taxable expenditure which would subject it to tax under section 4945 of the code."

L.1981, c. 405, § 3B:11-10, eff. May 1, 1982.

Historical Note

Source: C. 3A:43-3 (L.1971, c. 338, § 3).

Cross References

Devises to or in trust for associations not for profit prior to incorporation thereof, see § 46:7-8.

3B:11-11. Provision included in trust instruments governing split-interest trusts or private foundation trusts

Notwithstanding any provision to the contrary contained in any law of this State or in any trust instrument, and except as otherwise provided in N.J.S. 3B:11-12, each trust instrument governing a split-interest trust or a private foundation trust other than one as described in N.J.S. 3B:11-10, shall, by virtue of this article and without any further act by any person or persons, be deemed to include the following:

"Distributions of this trust shall be made at times and in a manner as not to subject the trust to tax under section 4942 of the Internal Revenue Code of 1954, as amended, and shall not engage in any act of self-dealing as defined in section 4941 of the code, and shall not retain any excess business holdings as defined in section 4943 of the code, and shall not make any investment as defined in section 4944 of the code, and shall not make any taxable expenditure which would subject it to tax under section 4945 of the code."

L.1981, c. 405, § 3B:11-11, eff. May 1, 1982.

Historical Note

Source: C. 3A:43-4 (L.1971, c. 338, § 4).

Library References

Internal Revenue ⇨4000, 4063. C.J.S. Internal Revenue § 425.

3B:11-12. Execution of instrument stating certain provisions not applicable to trust; filing

The trustee or trustees of any trust may, without judicial proceedings, execute an instrument stating that the provisions of N.J.S. 3B:11-10 or N.J.S. 3B:11-11, as the case may be, shall not be applicable to the trust, and upon filing a copy thereof in the office of the Secretary of State of this State, the provisions of N.J.S. 3B:11-10 or N.J.S. 3B:11-11, as the case may be, shall not apply to the trust.

L.1981, c. 405, § 3B:11-12, eff. May 1, 1982.

Historical Note

Source: C. 3A:43-5 (L.1971, c. 338, § 5).

3B:11-13. Construction of article

This article shall be so construed as to enable split-interest trusts and private foundation trusts to qualify for the maximum tax exemptions available to those trusts under the Internal Revenue Code of 1954 as amended.[1]

L.1981, c. 405, § 3B:11-13, eff. May 1, 1982.

1 26 U.S.C.A. § 1 et seq.

Historical Note

Source: C. 3A:43-6 (L.1971, c. 338, § 6).

3B:11-14. Power of courts or Attorney General not impaired by article

Nothing in this article shall impair the power conferred by law upon the courts or the Attorney General of this State with respect to any trust subject to the provisions of this article.

L.1981, c. 405, § 3B:11-14, eff. May 1, 1982.

Historical Note

Source: C. 3A:43-7 (L.1971, c. 338, § 7).

3B:11-15. Application of article

This article shall apply to all trusts, as defined herein, whether created before or after December 13, 1971.

L.1981, c. 405, § 3B:11-15, eff. May 1, 1982.

Historical Note

ADDENDUM

(1) Entry of Appearance

(2) Motion for Leave to Proceed Pro Se under Rule 34 - Form of Typewritten Pages

(3) Affidavit in Support of Motion for Leave to Proceed Pro Se Under Rule 34 - Form of Typewritten Pages

(4) Proof of Service

(5) Supreme Court of the United States Office of the Clerk letter dated August 7, 1991 - case to be docketed as of July 31, 1991

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1991

CORBY MEMORIAL TRUST, an Alabama Trust
UDT DTD 4-24-80
APPELLANT/PLAINTIFF

VS

STATE OF NEW JERSEY
APPELLEE/DEFENDANT

ENTRY OF APPEARANCE

STATE OF ALABAMA)
: ss.:
COUNTY OF MADISON)

WE, JAMES G. SOMERVILLE and ARLENE CORBY SOMERVILLE, as Pro Se Petitioners and Trustees for CORBY MEMORIAL TRUST, Appellant and Plaintiff, being duly sworn according to the law, do depose and say as follows:

that I, JAMES G. SOMERVILLE, do solemnly swear and affirm that as Pro Se Petitioner and Trustee for CORBY MEMORIAL TRUST, Appellant and Plaintiff in this case, I will conduct myself uprightly and according to law, and that I honor,

respect and cherish and will support The Constitution of the United States, and defend it against all enemies, foreign and domestic, so help me God;

that I, ARLENE CORBY SOMERVILLE, do solemnly swear and affirm that as Pro Se Petitioner and Trustee for CORBY MEMORIAL TRUST, Appellant and Plaintiff in this case, I will conduct myself uprightly and according to law, and that I honor, respect and cherish and will support The Constitution of the United States, and defend it against all enemies, foreign and domestic, so help me God;

that we are each making this oath to enter an appearance in the Supreme Court of the United States.

/s/ James G. Somerville
JAMES G. SOMERVILLE, Affiant
TRUSTEE/PRO SE

/s/ Arlene Corby Somerville
ARLENE CORBY SOMERVILLE,
Affiant
TRUSTEE/PRO SE

Subscribed and Sworn to
Before Me this 26th day
of July 1991

/s/ Lee B. Stewart
Notary Public in and For
Said County and State

My commission expires 10/17/94

CORBY MEMORIAL TRUST
(an Alabama Trust)

P.O. Box 4561
Huntsville, AL 35815

TEL: 205/882-1796

* * *

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1991

NO._____

CORBY MEMORIAL TRUST (an Alabama Trust)

VS

STATE OF NEW JERSEY

MOTION FOR LEAVE TO PROCEED PRO SE
UNDER RULE 34 - FORM OF TYPEWRITTEN PAGES

Pro Se Petitioners, JAMES G. SOMERVILLE and ARLENE CORBY SOMERVILLE, Trustees for CORBY MEMORIAL TRUST, an Alabama Trust under Declaration of Trust dated April 24, 1980, an irrevocable trust created for the purpose of philanthropy in perpetuity, reporting since inception to United States Internal Revenue Service complying with I.R.C. Section 664 as a split-interest trust of the **UNITRUST** type, ask leave to file attached petition for a Writ of Certiorari and to proceed under Rule 34 (Form of Typewritten

Papers). Petitioners have previously proceeded PRO SE in the TAX COURT OF NEW JERSEY, SUPERIOR COURT OF NEW JERSEY, Appellate Division, SUPERIOR COURT OF NEW JERSEY, Law Division, and SUPREME COURT OF NEW JERSEY; and, voluminous records of the case are entirely on typewritten pages, size 8½ x 11 inches.

Petitioners' affidavit in support of this motion is attached hereto.

Dated at Huntsville, Alabama this 26th day of July, 1991.

Respectfully submitted:

CORBY MEMORIAL TRUST
(an Alabama Trust)

/s/ James G. Somerville
JAMES G. SOMERVILLE
TRUSTEE/ PRO SE

/s/Arlene Corby Somerville
ARLENE CORBY SOMERVILLE
TRUSTEE/ PRO SE

P.O. Box 4561
Huntsville, AL 35815

TEL: 205/882-1796

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1991

NO. _____

CORBY MEMORIAL TRUST (an Alabama Trust)

VS

STATE OF NEW JERSEY

AFFIDAVIT IN SUPPORT OF A MOTION FOR LEAVE TO PROCEED PRO SE UNDER RULE 34 (FORM OF TYPE-WRITTEN PAGES)

WE, JAMES G. SOMERVILLE and ARLENE CORBY SOMERVILLE, being first duly sworn, depose and say that we are the PRO SE Petitioners in the above-entitled case, that in support of our Motion for Leave to Proceed PRO SE Under Rule 34 (Form of Typewritten Pages) we state:

that as Trustees for CORBY MEMORIAL TRUST, an Alabama Trust dated April 24, 1980 created to operate in perpetuity for philanthropic purposes, we have a sacred duty to

defend and preserve what every trustee of a charitable trust or foundation has a duty to uphold -- its tax-exempt status -- and which every Court in this Land must uphold under the constitutional principle of EQUAL JUSTICE UNDER LAW;

that it is a fundamental duty common to all trustees of charitable trusts that nothing must be allowed to jeopardize the tax-exempt status of the trust, nor to jeopardize the corpus or dissipate the corpus in any unjustifiable manner;

that we belong to a class of citizens whose only recourse is to act PRO SE, that exhaustion, financial and otherwise, is the adversary's mudus operandi; that to act other than PRO SE can only assure ultimate defeat;

that compliance with Rule 33 is a tremendous undue hardship to the PRO SE petitioners who are elderly, have chronic health problems (the administrative trustee currently experiencing vision problems), and local source(s) for preparation of printed

legal briefs under Rule 33 at reasonable cost due to experience in this specialty have not at this date been located; that personally complying with Rule 33 in the PRO SE method is impractical, unwieldy and inconsistent with all previous legal filings in the case;

that we believe the CORBY MEMORIAL TRUST is entitled to redress;

that we further respectfully state that having experienced the exhausting futile efforts wending our way PRO SE through the state courts in the notorious no-win forum with the well-known DEAF EAR at every step of the way, that at this point any requirement to qualify "in forma pauperis" to continue to act PRO SE is demeaning, degrading and inappropriate;

that in the event the "typewritten pages" of the attached PETITION FOR WRIT OF CERTIORARI must be printed under Rule 33, the PRO SE Petitioners respectfully request an extension of time of sixty (60) days to locate an experienced Rule 33 legal brief

printer to accomplish the conversion of these typewritten pages.

We understand that a false statement in this affidavit will subject us to penalties for perjury.

/s/ James G. Somerville
JAMES G. SOMERVILLE
TRUSTEE/PRO SE

/s/ Arlene Corby Somerville
ARLENE CORBY SOMERVILLE
TRUSTEE/PRO SE

Subscribed and Sworn to
before me this 26th day
of July 1991

/s/ Lee B. Stewart

My commission expires
10/17/94.

* * *

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 1991

NO._____

CORBY MEMORIAL TRUST (an Alabama Trust)
PETITIONER

VS

STATE OF NEW JERSEY
RESPONDENT

PROOF OF SERVICE

STATE OF ALABAMA)
: ss.:
COUNTY OF MADISON)

WE, JAMES G. SOMERVILLE and ARLENE CORBY SOMERVILLE, do swear or declare that on this date, July 26th, 1991, pursuant to Supreme Court Rules 29.3 and 29.4, we have served the attached MOTION FOR LEAVE TO PROCEED PRO SE UNDER RULE 34 and PETITION FOR A WRIT OF CERTIORARI on each party to the above proceeding, or that party's counsel, and on every other person required to be served by depositing an envelope containing the above documents in the United States mail properly ad-

dressed to each of them and with first-class postage prepaid.

The names and addresses of those served are as follows:

Mr. Stephen W. Townsend, Clerk of
Supreme Court of New Jersey, CN 970,
Trenton, New Jersey 08625

Hon. Robert J. DelTufo, Attorney
General of New Jersey, CN 112,
Trenton, New Jersey 08625

CORBY MEMORIAL TRUST
(an Alabama Trust)

/s/ James G. Somerville
JAMES G. SOMERVILLE
TRUSTEE/PRO SE

/s/ Arlene Corby Somerville
ARLENE CORBY SOMERVILLE
TRUSTEE/PRO SE

Subscribed and Sworn to Before Me
this 26th day of July 1991

/s/ Lee B. Stewart

Notary Public in and for said
County and State

My commission expires 10/17/94

* * *

SUPREME COURT OF THE UNITED STATES (5)
OFFICE OF THE CLERK
WASHINGTON, DC 20543

WILLIAM K. SUTER,
CLERK OF THE COURT

AREA CODE 202
479-3011

August 7, 1991

Mr. James G. Somerville
P.O. Box 4561
Huntsville,AL 35815

RE: James G. Somerville, et ux. v. New Jersey

Dear Mr. Somerville:

Your petition for a writ of certiorari typed on letter sized paper mailed from Huntsville on July 29, 1991 was received August 2, 1991 and must be returned. This Court no longer entertains motions to dispense with printing petitions for writ of certiorari. If you intend to pay the $300 docket fee, then the petition must be presented on paper which is 6 1/8 by 9 1/4 inches as stated in Rule 33.

Kindly redo the petition so that it complies with the Rules of the Court and submit 40 copies of the petition promptly. See Rule 33.7. Upon receipt of a properly prepared petition, the case will be docketed as of July 31, 1991.

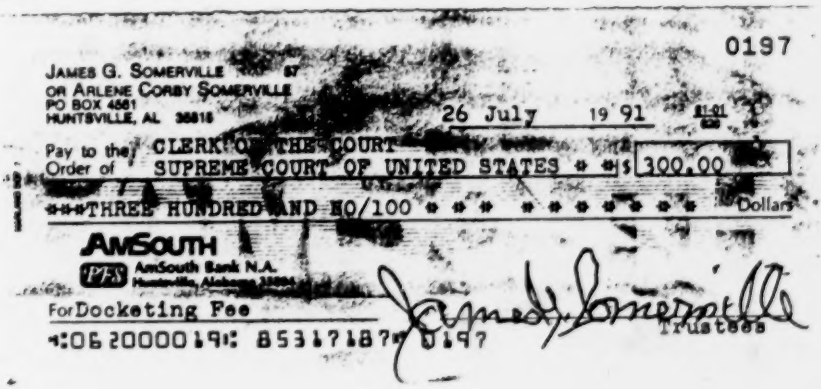
Very truly yours,

WILLIAM K. SUTER, Clerk

By
Francis J. Lorson
Francis J. Lorson
Chief Deputy Clerk

eao
Enc.

cc: Stephen W. Townsend
Robert J. DelTufo



(2)

No. 91-504

FILED

OCT 11 1991

OFFICE OF THE CLERK

In The

Supreme Court of the United States

October Term, 1991

JAMES G. SOMERVILLE, ARLENE CORBY SOMERVILLE, AND CORBY MEMORIAL TRUST,

Petitioners,

v.

NEW JERSEY,

Respondent.

Petition For A Writ Of Certiorari To The Supreme Court Of New Jersey

BRIEF AND APPENDIX IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF NEW JERSEY

ROBERT J. DEL TUFO
Attorney General of New Jersey
Attorney for Director, New Jersey Division of Taxation
R.J. Hughes Justice Complex
CN 112
Trenton, New Jersey 08625
(609) 292-4925

JOSEPH L. YANNOTTI
Assistant Attorney General
Of Counsel

HERBERT K. GLICKMAN
Deputy Attorney General
On the Brief

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

COUNTERSTATEMENT OF THE CASE

The decedent, Harry R. Corby, was domiciled in New Jersey at the time of his death on June 23, 1983. He had previously established a trust in 1980 in which he retained the right to the use of the trust income and corpus. The trust assets were in New Jersey. Since the decedent had retained power and control over the trust income and corpus during his lifetime, the Director of the New Jersey Division of Taxation ("Director") included the trust as part of the decedent's estate subject to New Jersey transfer inheritance taxes in accordance with *N.J.S.A.* 54:34-1(c) which specifically taxes transfers "intended to take effect in possession or enjoyment at or after . . . death."

Petitioners, James G. Somerville and Arlene Corby Somerville, trustees of the trust, disagreed with the Director's determination and appealed the decision by filing a complaint in the New Jersey Tax Court, the appropriate judicial forum entrusted to adjudicate appeals from determinations of the Director. In an opinion dated November 14, 1988, Presiding Tax Court Judge Lasser addressed each of the contentions raised by Mr. and Mrs. Somerville.* Judge Lasser specifically examined the language in the declaration of trust and concluded in his opinion (set forth on page 7a of the appendix to this brief):

> It is apparent from the language of the trust that the Settlor [decedent] intended a transfer of the trust income and corpus to take effect at his

---

* The petitioners failed to include the Tax Court opinion in their appendix. The Director has included the opinion in the appendix to this brief.

> death because prior to his death he had the right to take income and corpus from the trust, and this right did not terminate until his death.

Accordingly, Judge Lasser concluded that the Director correctly assessed the tax upon the trust in accordance with *N.J.S.A.* 54:34-1(c) as a transfer to take effect at death. A judgment was entered on November 18, 1988 (PCa36).

Petitioners appealed the Tax Court's determination to the Appellate Division of the New Jersey Superior Court. On November 30, 1989, in a *per curiam* decision, the Appellate Division affirmed the Tax Court's judgment for the reasons expressed in Judge Lasser's opinion (PCa33-34).

Petitioners appealed the determination of the Appellate Division to the New Jersey Supreme Court. On March 5, 1991 the New Jersey Supreme Court dismissed the appeal "for failure to state a substantial constitutional issue." (PCa5). Petitioners' motion for reconsideration was denied by the New Jersey Supreme Court on April 30, 1991 (PCa1).

ARGUMENT

SINCE THE DECEDENT RETAINED POWER AND CONTROL OVER THE TRUST INCOME AND CORPUS DURING HIS LIFETIME, SUCH TRUST PROPERTY IS SUBJECT TO THE NEW JERSEY TRANSFER INHERITANCE TAX IN ACCORDANCE WITH *N.J.S.A.* 54:34-1(c) AS A TRANSFER INTENDED TO TAKE EFFECT IN POSSESSION OR ENJOYMENT AT OR AFTER DEATH.

The authority to control, permit, regulate and condition the testate and intestate transmission and devolution of a domiciliary's property within the jurisdiction of a state resides in the state. The doctrine has been recognized in a long line of cases that such authority is part of the residue of sovereignty retained by the states, and insured by the Tenth Amendment of the Federal Constitution. *United States v. Fox*, 94 *U.S.* 315 (1877); *United States v. Perkins*, 163 *U.S.* 625 (1896); *Magoun v. Illinois Trust & Savings Bank*, 170 *U.S.* 283 (1898); *Plummer v. Coler*, 178 *U.S.* 115 (1900); *Snyder v. Bettman*, 190 *U.S.* 249 (1903); *Maxwell v. Bugbee*, 250 *U.S.* 525 (1919); *United States v. Burnison*, 339 *U.S.* 87 (1950).

The New Jersey transfer inheritance tax is a privilege levy on the right of succession to property transferred by a decedent and is levied on the transfer. *In re Estate of Anne Boyd Lichtenstein*, 52 *N.J.* 553, 247 A.2d 320 (1968). *N.J.S.A.* 54:34-1 provides that:

> . . . a tax shall be and is hereby imposed . . . upon the transfer of property, real or personal . . . or of any interest therein or income therefrom, in trust or otherwise, to or for the use of any transferee, distributee or beneficiary. . . .

> c. Where . . . property . . . is transferred by deed, grant, bargain, sale or gift . . . intended to take effect in possession or enjoyment at or after . . . death.

It is clear that in the present case the trust created by the decedent comes within the aforesaid statutory provision. The decedent retained full control over the trust as trustee and reserved the right to the use of income and principal including the right to invade the capital for his, and his family's, care and welfare and to make gifts. Moreover, the decedent reserved the power to amend the trust.

As noted by the New Jersey Supreme Court in *Darr v. Kervick*, 31 *N.J.* 476, 483-84, 158 A.2d 42 (1960):

> It is a well-established rule venerable with age, that a transfer *inter vivos* by which the donor retains a life estate in the subject matter is a transfer "intended to take effect in possession or enjoyment at or after . . . death." (citations omitted). It is substance, rather than form, which controls, and the transfer is subject to the transfer inheritance tax even if stated by its term to be absolute, if it appears that the donor in actuality retains a life interest in the property or its income. (citations omitted).

Thus the transfer of the trust property, which was located in New Jersey, upon the death of the decedent, who was domiciled in New Jersey, is clearly subject to the New Jersey tax in accordance with *N.J.S.A.* 54:34-1(c).

The petition for a writ of certiorari plainly does not present any question of constitutional dimension nor any

other basis which would warrant the granting of such relief. The petition should therefore be denied.

CONCLUSION

For the above-stated reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

Respectfully submitted,

ROBERT J. DEL TUFO
Attorney General of New Jersey
Attorney for Director,
New Jersey Division of
Taxation
R.J. Hughes Justice Complex
CN 112
Trenton, New Jersey 08625
(609) 292-4925

JOSEPH L. YANNOTTI
Assistant Attorney General
Of Counsel

HERBERT K. GLICKMAN
Deputy Attorney General
On the Brief

Dated: October 11, 1991

NOT FOR PUBLICATION WITHOUT THE APPROVAL
OF THE TAX COURT COMMITTEE ON OPINIONS

TAX COURT OF NEW JERSEY
DOCKET NO. 11-11-0315-87IT

CORBY MEMORIAL TRUST,

Plaintiff,

v.

MEMORANDUM
OPINION

STATE OF NEW JERSEY,

Defendant.

Decided November 14, 1988

James G. Somerville and Arlene Corby Somerville, *pro se*, for plaintiff.

Herbert K. Glickman for defendant (W. Cary Edwards, Attorney General of New Jersey, attorney).

LASSER, P.J.T.C.

Plaintiffs, trustees of the Corby Memorial Trust, contest a New Jersey transfer inheritance tax assessment imposed by the Director, Division of Taxation, on the transfer of assets of an *inter vivos* trust, which transfer was held by the Director to be a transfer intended to take effect at or after death, pursuant to *N.J.S.A.* 54:34-1(c). The Director moved for summary judgment on this ground and also moved to dismiss plaintiffs' complaint for failure to file in a timely manner. Plaintiffs made a cross-motion for summary judgment and, additionally, claimed that the Director failed to timely file a responsive

pleading. By consent of the parties, the matter was submitted to the court for decision without oral argument.

The Director alleges in his answer that plaintiffs failed to timely file their complaint, however, a review of the record indicates that plaintiffs timely filed within the 90-day period set forth in *N.J.S.A.* 54:51A-14 and *R.* 8:4-1(b). Correspondence from the Director to plaintiffs after they had used four days of their appeal time gave them 86 days from June 25, 1987 to appeal to the Tax Court. These 86 days expired on September 19, 1987, a Saturday. The complaint was filed on Monday, September 21, 1987. When the deadline for filing falls on a Saturday, Sunday or holiday, the time for filing is extended to the next business day. *R.* 1:3-1.

The Director was required to file his answer within 60 days, pursuant to *R.* 8:4-3. The Director timely filed his answer on November 20, 1987.

I

Harry R. Corby, as Settlor, created the Corby Memorial Trust on April 24, 1980. He died June 23, 1983. The trust agreement provided that, during his lifetime, Harry R. Corby was to serve as trustee together with his daughter, Arlene Corby Somerville, who was designated alternate trustee. Although the trust was irrevocable, Mr. Corby reserved full power and control over the trust income and reserved the right to invade corpus and amend the trust.

The trust agreement also provided that upon the death of the Settlor, Arlene Corby Somerville and her

husband, James G. Somerville, are to serve as co-trustees and the income of the trust is to be distributed as follows:

a. The net income of the trust to Arlene Corby Somerville and her husband, with the option to leave the income in the trust for accumulation;

b. $100 per month to James Corby Somerville, grandson of Harry R. Corby, with the option of contributing same back to the trust to aid its accumulation goal;

c. $100 per month for life to Nila M. Stickney, sister of Harry R. Corby, and

d. In addition to the foregoing, at the discretion of the co-trustees, donations may be made to "churches, charities, etc."

Upon the death of Arlene Corby Somerville and her husband, the net income of the trust is to be distributed to James Corby Somerville, their son, as the "anticipated final income beneficiary," for his life. The trust instrument authorizes the corpus to be invaded in the event James should suffer catastrophic illness. He also was given the option of allowing the trust income to accumulate.

Upon the death of all of the income beneficiaries, the then remaining trust corpus is to be distributed for the purposes of "charity, education, conservation, scientific and medical research."

At the time of Harry R. Corby's death, the trust corpus consisted of cash located in several New Jersey banking institutions and real property located in New Jersey. The trust instrument was signed by decedent and

notarized in New Jersey. Plaintiffs state in their complaint that the principal office of the trust is in Huntsville, Alabama, where plaintiffs reside, and they contend that the trust corpus is "domiciled" in Alabama, not in New Jersey where decedent died and where the trust corpus was physically located at the time of settlor's death.[1] Plaintiffs insist that the property belongs to a "foreign trust" over which New Jersey has no jurisdiction.

On March 14, 1985, the Transfer Inheritance Tax Bureau of the Division of Taxation notified Arlene Corby Somerville, as executrix of decedent's estate, of the assessment of a direct transfer inheritance tax due in the amount of $11,210.19, plus interest from February 23, 1984, on the transfer of trust assets which took effect upon death, and offered a compromise tax of $2,539.10 on the contingent remainder interest.[2]

Plaintiffs contend that the Director wrongfully assessed the trust, asserting the following constitutional grounds:

1. The tax is a wrongful taking of trust property by the State in violation of the United States Constitution;

---

[1] Plaintiffs' statements with respect to the location of the trust appear to refer to periods after the death of the Settlor.

[2] The remainder interest is contingent because the income beneficiaries survived the decedent and have the right to invade corpus, so the value of the corpus left for the charitable remainder and the value of the contingent life estate of Settlor's grandson cannot be determined at the date of death.

2. The trust and the beneficiaries are immune from New Jersey taxes because of constitutional provisions that government cannot tax those over whom it does not govern, and

3. The trust is tax exempt since it has been granted tax exempt status under federal tax provisions, specifically § 664 of the Internal Revenue Code.

In addition, plaintiffs contend that the Director wrongfully assessed the trust assets because:

1. the Settlor intended the transfer to take effect when he created the trust, not at the time of his death;

2. the Settlor created the trust more than three years before his death; therefore, the trust was not made in contemplation of death and could not have been intended to take effect on Settlor's death;

3. the Settlor's retained rights in the trust were merely options or contingencies and, in fact, he allowed all of the income to accrue and remain in the trust, and

4. 100% of the trust property is vested in the charitable remainder trust and, therefore, the transfer of its assets are exempt from taxation by New Jersey.

The Director maintains that the trust is subject to tax under *N.J.S.A.* 54:34-1(c) as a transfer to take effect upon death because the Settlor retained full power and control over the trust income and corpus during his lifetime.

II.

Plaintiffs argue that the decedent did not intend the transfer of property to the trust to take effect upon his death and, therefore, the transfer is not subject to tax under *N.J.S.A.* 54:34-1(c). However, under the trust agreement, the Settlor, during his lifetime, retained substantial interest and control over the trust property. The agreement reserved to the Settlor "the right to use of 'net income' which may be distributed to me at my option or discretion or that of my Alternate Trustee." [Art. Second (a) (2)]

Although in the trust agreement the Settlor expressed his intention to "conserve" and "enhance" the trust's capital, he also provided that " . . . capital or corpus of this trust may be used for my care or welfare to the extent necessary or in the event of a long or catastrophic illness, or unusual circumstances such as economic failures, inflated living costs, etc. if income shall be deemed insufficient for such purposes by myself as Trustee or my Alternate Trustee acting in my behalf." Additionally, he provided that "I may continue my practice of making gifts or donations to charity, church, etc., or to members of my family from time to time from this trust. . . . " [Art. Second (b) (1) & (2)]

The trust instrument specifically provides that, at the Settlor's death, the trust income is to be distributed to the several named beneficiaries, including the plaintiffs in this case. [Art. Second (b) (1) & (2)]

Further, although accumulation of the trust corpus was a "prime and crucial objective" behind the creation

of the trust, the instrument does not command such accumulation. It states:

> Invasion of the trust corpus . . . is contrary to the philosophy and objective of the trust. However, considering realistically that circumstances of extreme need may occur, . . . the Trustee, Alternate Trustee or Successor Co-Trustee may invade capital for the care and welfare of the maker, Harry R. Corby or . . . James G. or Arlene Corby Somerville or . . . James Corby Somerville to the extent such catastrophic illness or extreme need is not covered by health insurance, veteran's benefit programs, etc. [Art. Fifth, par. 4]

It is apparent from the language of the trust that the Settlor intended a transfer of the trust income and corpus to take effect at his death because prior to his death he had the right to take income and corpus from the trust, and this right did not terminate until his death.

Plaintiffs claim that the decedent's retained rights in the trust were only options that he did not exercise during his life. However, the presence of such retained rights is sufficient to subject the transfer to tax. In *Millar v. Taxation Div. Director*, 9 *N.J. Tax* 48 (Tax Ct. 1987), the court explained that "[i]f property is transferred prior to death, it is the presence of a retained interest transferred at death which triggers taxation." 9 *N.J. Tax* at 53, citing *In re Estate of Lichtenstein*, 52 *N.J.* 553, 247 *A.*2d 320 (1968). *See also Darr v. Kervick*, 31 *N.J.* 476, 483-84 (1960); *In re Brockett's Estate*, 111 *N.J. Eq.* 183, 186 (Prerog. Ct. 1932). The court in *Millar* stated:

> . . . a transaction which comes within the statute is one in which a settlor creates a trust and transfers property to the trust but reserves the

> income to himself until his death. The settlor is not regarded as having given up the property since he retains a right to the income, which right terminates at his death, and the transfer is regarded to be effected at that time. *See Carter v. Bugbee*, 91 *N.J.L.* 438, 103 *A.* 818 (Sup. Ct. 1918), aff'd 92 *N.J.L.* 390, 160 *A.* 412 (E. & A. 1918). 9 *N.J. Tax* at 53.

The language of the trust instrument and case law support the conclusion that retention of rights by the Settlor to take income and corpus from the trust during his life, which rights do not terminate until his death, results in a transfer to the beneficiaries that takes effect on the Settlor's death, and therefore the transfer is subject to tax under *N.J.S.A.* 54:34-1(c).

Plaintiffs seek to apply the language of the "contemplation of death" presumption to the subject trust. *N.J.S.A.* 54:34-1(c) deals with two types of transfers: (1) transfers intended to take effect upon death, and (2) transfers made in contemplation of death. *N.J.S.A.* 54:34-1(c), par. 2 deems a transfer made within three years prior to death to have been made in contemplation of death. Paragraph 2 also provides that if the transfer is made prior to such three-year period, the transfer shall not be deemed to have been made in contemplation of death. Plaintiffs argue that since decedent created the trust more than three years before his death, there was no transfer intended to take effect at death.

However, the "contemplation of death" presumption has no relevance to transfers intended to take effect upon death, which are conditional transfers complete only upon the death of the transferor. The presumption relates

only to taxability of transfers made in contemplation of death, which are completed before death and are separate and distinct from transfers intended to take effect upon death.

The trust agreement also provides for a charitable remainder. At the death of the non-charitable beneficiaries, the corpus is to be used for charity, education, conservation and scientific and medical research. The taxability of the charitable remainder is not an issue in this case because the Director did not tax the charitable remainder portion of the trust. He stated in a July 14, 1986 letter to plaintiffs that the income benefits received by Arlene Corby Somerville, her husband and their son are "what has become subject to tax, and not any remaining portion that will ultimately vest in the charity involved."

Plaintiffs contend that the transfer of the assets of the trust is not taxable by the State of New Jersey because the trust is a tax-exempt charitable remainder split-interest unitrust under *I.R.C.* § 664 and therefore is exempt from New Jersey's transfer inheritance tax.

It appears that the subject trust may not comply with *I.R.C.* § 664(d)(2) because it does not provide for payment of a fixed annual percentage of at least five percent of the value of the trust assets to noncharitable beneficiaries. Additionally, the trust grants to the co-trustees and the final income beneficiary the power to invade the corpus of the trust, which appears to be contrary to the requirements of *I.R.C.* § 664(d)(2). However, the federal tax treatment of this trust has no bearing on whether the transfer of assets upon the death of the Settlor to the non-

charitable beneficiaries is taxable by the State of New Jersery [sic].

Plaintiffs also cite *I.R.C.* § 508(e) for the proposition that the trust is tax exempt. *I.R.C.* § 508(e) pertains only to provisions that must be included in the governing instrument of a private foundation in order for it to qualify for federal income tax exemption under *I.R.C.* § 501 and does not affect the taxability of the subject transfer by New Jersey.

III.

Plaintiffs assert that the State of New Jersey lacks the power or jurisdiction to tax the trust. The power to tax is conferred upon the Legislature by the *N.J. Const.* (1947) Art. VIII, § 1, par. 1.[3] In the context of the transfer inheritance tax, the New Jersey Supreme Court has affirmed the State's authority to tax such transfers. "The authority to control, permit, regulate and condition the testate and intestate transmission and devolution of a domiciliary's property within the jurisdiction of a state resides in the state." *United States v. Kingsley*, 41 *N.J.* 75 (1963). Although *Kingsley* involved a will, the language is applicable to the case at bar. The court explained the transfer inheritance tax as follows:

> In effect, the state says to a testator "You may devise or bequeath your property but in return for the privilege of doing so, a tax must be paid,

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[3] For an historical discussion of the Legislature's taxing power in general *see League of Municip. v. Kimmelman*, 105 *N.J.* 422, 428 (1987).

> the amount of which shall depend on the value of the property you devise or bequeath and on the relationship to you of the devisee or legatee you select." *Kingsley*, 41 *N.J.* at 80.

Plaintiffs further contend that the State's use of its taxing authority in this case is repugnant to the United States Constitution. However, the court in *Kingsley*, in citing several United States Supreme Court cases, stated that "[t]he doctrine has been recognized in a long line of cases that [a state's authority to regulate inheritance distribution] is part of the residue of sovereignty retained by the states, and insured by the Tenth Amendment of the Federal Constitution. [citations omitted]." *Kingsley*, 41 *N.J.* at 79. Such authority includes the legislative power to impose a tax on "the *transfer* by a resident of intangible personal property wherever situate," *Pennsylvania Co., etc. v. Kelly*, 134 *N.J.Eq.* 120, 125 (Prerog. Ct. 1943), and real property located in New Jersey. *N.J.S.A.* 54:34-1(c). *N.J.S.A.* 54:34-1 provides in relevant part:

> . . . a tax shall be and is hereby imposed . . . upon the transfer of property, real or personal, of the value of $500.00 or over, or of any interest therein or income therefrom, in trust or otherwise, to or for the use of any transferee, distributee or beneficiary . . .
>
> c. Where real or tangible personal property within this State of a resident of this State or intangible personal property wherever situate of a resident of this State . . . is transferred by deed, grant, bargain, sale or gift . . . intended to take effect in possession or enjoyment at or after such death.

The record indicates that at the date of decedent's death, funds of the trust were deposited in banking institutions within New Jersey and the trust's real property was situated within this State. The decedent was a resident of New Jersey, and there is no evidence that any of the trust assets that were real property or tangible personal property were located outside of New Jersey at the date of decedent's death. I find that the trust and its assets are subject to inheritance tax by New Jersey under *N.J.S.A.* 54:34-1.

IV

The Bureau offered a compromise tax based on its conclusion that the ultimate disposition of a portion of the taxable estate valued at $171,273.61 is contingent and taxes thereon are presently indeterminable. The Bureau calculated that the maximum contingent tax would be $17,447.32, depending on the ultimate beneficiaries and the amount received by each. The $2,539.10 compromise tax represents a present adjustment of taxes to become due in the future and is authorized by New Jersey statute. *N.J.S.A.* 54:36-6. Plaintiffs have not contested the calculation of the direct tax or the compromise tax.

I find that the Director has correctly imposed transfer inheritance tax on the transfer of assets of the Corby Memorial Trust as a transfer to take effect at death and has the constitutional and statutory authority to do so.

Director's motion for summary judgment is granted, and Director's assessment is affirmed. Plaintiffs' cross-motion for summary judgment is denied.
